

**EXISTING POLICY AS TO ADMINISTRATION AND
ENFORCEMENT OF DOOR COUNTY CODE 21.03 E(1)(a)2**

**Upgrading of Existing Private Waste Disposal Systems at Time of Sale or
Conveyance of Property Ownership**

The ordinance is enacted for the upgrading of the environmental health and safety of the public. Door County Ordinance 31-86 requires the replacement of existing failing private sewage disposal systems after identification of these systems within one year of the transfer, sale or conveyance date. Replacement of these systems will protect the waters of the County, ensure a properly functioning private waste disposal system for the owner, and enhance the public health.

Definitions:

"Building" means a structure having walls and a roof erected or set upon an individual foundation or slab-constructed base designed or used for the housing, shelter, enclosure or support of persons, animals or property of any kind. A mobile home is included in this definition. Each structure abutting another structure, which does not have an ingress-egress doorway through the basement foundation walls, or public use structures separated by an unpierced firewall, shall be considered as a separate or individual building.

"Failing private sewage system": A failing private sewage system is one which causes or results in any of the following conditions:

1. The discharge of sewage into zones of bedrock.
2. The discharge of sewage to the surface of the ground or to a drain tile.
3. The discharge of sewage to any waters of the state.
4. The introduction of sewage into zones of saturation which adversely affects the operation of a private sewage system.

"Bedrock" means the rocks that underlie soil material or are at the earth's surface. Bedrock is encountered when the weathered-in place consolidated material, larger than 2mm in size, is greater than 50% by volume.

"High groundwater" means zones of soil saturation, which include: Perched water tables, shallow regional groundwater tables or aquifers, or zones that are seasonally, periodically or permanently saturated.

"Private sewage system" is defined in s.145.01(12), Wis. Stats.

"Private residence" means a one or two family building or dwelling.

"Public building" means any structure, including exterior parts of such building, such as a porch, exterior platform, or steps providing means of ingress or egress, used whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy or use by the public or by three or more tenants in accord with ss.101.01(2)(h), Wis. Stats.

Section I. Duty to Report.

Any person transferring, selling or conveying a building or dwelling shall report such transfer, sale or conveyance within fifteen (15) days prior to said transfer, sale or conveyance to the Door County Sanitarian's Office. Reporting shall be by any real estate agent, person or person's agent.

Prior to the transfer, sale or conveyance of any building or dwelling, the transferor, seller or conveyor, shall have conducted an evaluation of the existing private waste disposal system, if said structure is served by same. An evaluation of the private waste disposal system shall be done by a Wisconsin licensed master plumber, master plumber restricted sewer, certified plumbing inspector II, or certified soil tester. Evaluation shall be conducted in accordance with and on forms furnished by the Door County Board of Health. All evaluations shall be submitted to the Door County Sanitarian's Office for review. The Door County Sanitarian's Office is empowered to investigate any system so evaluated.

If upon inspection by a representative of the Door County Sanitarian's Office the existing private waste disposal system meets the criteria of a "failing private sewage system" as defined in ss.145.245(4), Wis. Stats., and an order for replacement is issued to the transferor or transferee for replacement under authority of ss.145.20(2)(e), (f), and (g), Wis. Stats., said new system shall be installed within one (1) year of the sale or conveyance date by the transferee unless by written agreement the transferor has retained the obligation to replace the system.

Life Estates. When an owner transfers property and retains a life estate, it is not considered a transfer until the owner has been divested of all rights of ownership.

For this exemption to be granted, the deed must state that a life estate is retained by the grantor or a separate life estate document shall be recorded.

Any cancellation of the life estate prior to the death of the one holding the life estate would require a sanitary evaluation by original grantor and in accordance with the time limits set by the ordinance for transfers.

Buildings Not Separate From Land. Buildings are not separate from land. When land is transferred, an inspection of the existing private waste disposal system is required no matter who owns the buildings.

Door County Code 21.03 E(1)(a)2

Page 3

Gifts. Prior to the transfer, an inspection is made and if a system is failing, it must be replaced. If and when another person is added to the property ownership, another inspection will be necessary unless the last inspection was completed within the last twenty-four (24) months.

Marital Estate. The transfer between spouses will not require an evaluation.

Adding a son or daughter to the deed, such as joint tenant, will require an evaluation. Transfer or individually classified property from husband to wife, or wife to husband to wife, is a transfer.

Revocable Living Trusts. No evaluation is required when property is transferred to a revocable living trust. Transfer back to an original owner from a revocable trust does not require an evaluation. A copy of the trust document must be sent to the Door County Sanitarian's Office.

Irrevocable Living Trust. An irrevocable living trust is considered a transfer since it cannot be taken back by the transferor.

Lease-Option. A lease with an option to purchase or lease giving credit for rent paid to the lessee is not considered a transfer, until the option is exercised.

Land Contracts. Sale on land contract is a transfer since all ownership interest is transferred.

Transfers of Property Ownership Within 24 Months of a Previous Transfer. If an inspection, evaluation and upgrade has been accomplished or if the system was inspected and found to not be failing, a second transfer within 24 months will not require another evaluation. The 24-month time period will be within the discretion of the Door County Board of Health.

Addition/Subtraction. The addition of a name to property ownership is considered a transfer except between spouses. If a name is dropped from the property ownership, it is not a transfer.

Proposed Sales That Fall Through. If a seller has a contract to sell, and meets his/her obligation by having the existing system evaluated, that seller must replace a system determined to be failing even if the sale or transfer does not go through.

If an order is outstanding when a new buyer takes property ownership, the new buyer does not have another year from time of sale to replace the failing system. The new buyer is bound by the requirements of the order to the seller.

Hardship-Variance or Extension. A buyer may apply to the Door County Board of Health for a variance. The buyer will have the burden of establishing a hardship that is unique to the land in question. An unnecessary hardship exists when compliance with the strict letter of the ordinance would unreasonably prevent the buyer from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Financial impact is not considered for a hardship variance.

Abandonment. A buyer can enter into an agreement for ceasing use of the property. This agreement shall establish a deadline to have new plumbing work completed prior to the resumed use of the property. Use of the property, prior to installation of a code compliant system, shall result in prosecution.

Recording of Transfers. Transfers are considered made when the deed, land contract, etc., is dated. Subsequent recording of the document will revert back to the date on the instrument indicating when the property was transferred.

Mistakes. A deed filed to correct a mistake in the spelling of a name or a legal description is not a transfer. A deed by an owner to himself to combine two (2) lots is not considered a transfer. If a transfer is made and no inspections have been made, the grantees can deed back to the grantor without the requirement of further inspections under this ordinance.

Mortgage. Obtaining a loan and mortgaging property does not constitute a conveyance or transfer.

Transfers by Operation of Law. Transfers by operation of law or court order will not require an evaluation.

Compliance. Compliance is complete when the system is installed and has final approval from the Door County Sanitarian's Department. Submittal of soil tests, permit application, etc., does not constitute compliance.

State Statutes. Door County Ordinance No. 31-86 (n/k/a Door County Code 21.15) is subject to any provision in State Statutes, which may conflict with it or are more restrictive than this ordinance. Door County Ordinance No. 31-86 is not intended to reduce or hinder any powers the county sanitarian may have under State Statutes.

Section II. Penalty.

Any person, firm, or corporation who fails to comply with any of the terms of this ordinance shall forfeit, upon conviction, not less than \$50 nor more than \$5,000, plus costs of prosecution. Each day of violation shall constitute a separate offense. Upon

Door County Code 21.03 E(1)(a)2
Page 5

default of payment of such forfeiture and costs, the violator may be imprisoned in the county jail until payment thereof, but not to exceed thirty (30) days.

(Ord. 31-86; 6/24/86) (Ord. 43-89; 12/19/89) (Ord. 24-90; 7/24/90) (Ord. 3-93; 2/23/93)
(Ord. 3-94; 2/22/94)

(Note: All references to Door County Health Commission have been changed to Door County Board of Health, per Resolution 89-93; 2/22/94)